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In the

Supreme Court of the United States

October Term, 1935.

In Equity.

No. 10, ORIGINAL.

THE STATE OF WYOMING, *Complainant,*

vs.

THE STATE OF COLORADO, *Defendant.*

RETURN OF THE DEFENDANT THE STATE OF COLORADO TO THE RULE TO SHOW CAUSE ENTERED MARCH 4, 1940.

RALPH L. CARR,
Governor of the State of Colorado,

CLIFFORD H. STONE,
JEAN S. BREITENSTEIN,
Special Counsel for the State of Colorado.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The state of Colorado, a state of the union of the United States of America, appearing in her capacity as such state by Ralph L. Carr, her governor and chief executive, hereby shows cause in response to the rule entered by this Court on March 4, 1940, and says:

I.

Section 2, Article IV, of the constitution of the state of Colorado provides:

> "The supreme executive power of the state shall be vested in the governor who shall take care that the laws be faithfully executed."

Ralph L. Carr, the governor of the state of Colorado, by his executive order dated March 20, 1940, removed Byron G. Rogers, attorney general of the state of Colorado, as the duly accredited representative of the state of Colorado in this cause. A copy of such order is attached hereto as Exhibit "A" and by this reference is made a part hereof.

II.

The State Engineer of the state of Colorado is the duly constituted and authorized official in the state of Colorado having general supervising control of public waters of the state.

III.

After the decree of this Court dated June 1, 1936, and until September 15, 1938, the enforcement thereof was held in abeyance pending the filing of a petition for rehearing in said cause by the state of Colorado, the time for the filing such petition for rehearing having been extended until said date with the express consent of the state of Wyoming. The meadowland appropriators referred to in the decisions and decrees of this Court, with the knowledge and consent of the state of Wyoming and her officials were permitted during said period to divert, and did divert, water from the stream in accordance with the statutes of the state of Colorado and adjudication decrees of the Colorado District Court, as had been their custom and practice for over fifty years. Prior to the irrigation season of 1937, in accordance with an understanding between water officials of the states of Wyoming and Colorado seven Parshall measuring flumes equipped with automatic meas-

uring devices were installed at representative headgates diverting water from the Laramie River for the irrigation of meadowlands, so that a joint study could be made as to the use of water for the irrigation of said meadowlands. This study disclosed that during the 1937 irrigation season, approximately ten (10) acre feet of water was diverted through said test headgates for the irrigation of each one (1) acre of meadowland. Prior to the 1939 irrigation season, at the request of the state of Wyoming, the meadowland appropriators by the direction of the Colorado State Engineer, installed measuring devices at the headgates of all ditches diverting water from the Laramie River for the irrigation of meadowlands. Said devices were not automatic and required daily inspection to determine the amount of water diverted. These devices were installed on sixty-one (61) ditches over an area approximately twenty-seven (27) miles in length.

On or about the 24th day of September, 1938, Adelriek Benziger, the owner of a meadowland appropriation in Colorado from the Laramie River, brought suit on behalf of himself and all other persons similarly situated against the owners of the transmountain diversion ditches from the Laramie River (referred to in the decisions of this Court as the Sky Line Ditch, the Wilson Supply Ditch and the Laramie-Poudre tunnel), and the Colorado water officials for a declaratory judgment and injunction. Said action was brought in the District Court of Larimer County, Colorado, the proper court for the adjudication of water rights in Colorado Water District No. 48, wherein the diversions in question were made, said suit being No. 7897 on the docket of said Court. In said suit the plaintiff contended that the decisions and decrees of this Court in the two cases of Wyoming v. Colorado, made an equitable apportionment to Colorado of 39,750 acre feet per annum of the water of the Laramie River, and that the Colorado laws and adjudication decrees operated to divide this water among the Colorado water users. The defend-

ants contended that said decrees and decisions of this Court made a specific allotment to each of the transmountain diverters and to the meadowland diverters and, that the adjudication decrees of the Colorado District Court were modified both in amounts and priorities by such specific allotments. As of February 2, 1939, the District Court of Larimer County, Colorado, entered in said case its findings and decree, a copy of which marked Exhibit "B" is attached hereto for reference and greater certainty. By said findings and decree the Court found and adjudged that the decrees and decisions of this Court made a mass allocation to Colorado of 39,750 acre feet per annum of water from the Laramie River, and that the Colorado appropriators of water from said stream could divert in accordance with their state decrees until said total amount of 39,750 acre feet was diverted at the headgates of the Colorado ditches. Said case is now pending in the Colorado Supreme Court on writ of error.

During the 1939 irrigation season the Colorado water officials administered the equitable apportionment of the flow of the Laramie River allotted to Colorado by the decisions and decrees of this Court, to-wit 39,750 acre feet per annum, in accordance with the decree of the District Court of Larimer County, Colorado. To administer said stream during the 1939 season the Colorado State Engineer employed additional men to assist the Water Commissioner of the said Water District No. 48. On or about June 18, 1939, a total of 39,750 acre feet of water had been diverted from said stream in Colorado. The State Engineer did then close all of the headgates on said stream in Colorado and did post on such headgates notices reciting that the headgates were closed, "in accordance with the provisions of a decree of the United States Supreme Court in Wyoming v. Colorado; and in accordance with the decree of the District Court of Colorado, Larimer County, Cause No. 7897, entered on the 2nd day of February, A. D. 1939."

At the time of the closing of said headgates, it was evident that without further irrigation, no hay crop could be produced on the Colorado meadowlands which require irrigation until about July 25. The owners of said meadowland appropriations did through their representatives present such situation to the officials of the state of Wyoming and an understanding was reached between said Wyoming officials and the owners of the Colorado meadowland appropriations that the headgates of the meadowland ditches might be reopened for further irrigation. In accordance with such understanding and with the express knowledge and consent of the officials of the state of Wyoming, the meadowland headgates were then reopened and further water diverted from the Laramie River. The facts and circumstances relating to such understanding between the Colorado meadowland appropriators and the state of Wyoming are evidenced by the affidavit of R. M. Leaky, Jr., which is attached hereto as Exhibit "C" and by this reference made a part hereof. After the reopening of said meadowland headgates the Colorado transmountain diverters, except the Wilson Supply Ditch, did reopen their headgates and divert further water from the Laramie River, contending that they had the right to do so because the Supreme Court of the United States had made to them specific allotments of water from the said stream, which up to that time they had not received, and further contending that after the plaintiffs in the aforesaid suit in the District Court of Larimer County, Colorado, had violated the decree thereof, no complaint could be made of a violation of such decree by the transmountain diverters. The Wilson Supply Ditch did not reopen its headgate or divert any water after June 18, 1939.

On or about the 1st day of July, 1939, officials of the state of Wyoming conferred with the Governor, the Attorney General and the State Engineer of the state of Colorado. At said conferences the Wyoming officials stated that they had no objection to the reopening of the meadow-

land headgates. Said Wyoming officials did object to further diversions by the Colorado transmountain appropriators.

Attached hereto and by this reference made a part hereof as Exhibits "D" and "E," are the affidavits of Ralph L. Carr, Governor of the State of Colorado, and M. C. Hinderlider, State Engineer of the State of Colorado, as to the facts respecting said conference of July 1, 1939.

On July 13, 1939, the Colorado State Engineer did again close the headgates of all ditches in Colorado diverting water from the Laramie River.

Attached hereto as Exhibit "F," and by this reference made a part hereof, is the affidavit of C. C. Hezmalhalch, Deputy State Engineer of the State of Colorado, as to the facts relative to the installation of measuring devices and the closing of said headgates on June 18, and July 13, 1939.

IV.

Water diverted and taken from the Laramie River in 1939 contrary to the express provisions of the decree of this Court dated June 1, 1936, was so diverted and taken with the express knowledge, consent and acquiescence of the state of Wyoming as recited above. Neither the state of Colorado, nor any of her officials, authorized or directed the diversion or taking of any water from the Laramie River after 39,750 acre feet of water had been diverted from said stream in 1939 at the headgates of Colorado ditches.

V.

The state of Wyoming and her water officials consented to and acquiesced in the reopening of the headgates of the Colorado meadowland ditches, as above stated, because they well knew that neither the state of Wyoming nor her water users would be damaged thereby. The methods of

irrigating meadowlands along the Laramie River in both Wyoming and Colorado have been identical since the settlement of that river valley approximately seventy years ago. To raise hay on the livestock ranches there located it is necessary to keep the plant roots moist for a period of sixty to sixty-five days ending between July 20 and August 1 of each year. This has been accomplished for many years in each state by the flooding of the fields with water diverted from the river. The results of such practice in Wyoming have shown that at least 75% of the water so diverted from the stream returns directly thereto for use downstream. With knowledge of such fact, the state of Wyoming pleaded in its original complaint in this litigation (Vol. 1, page 7, transcript of record) that 75% of the meadowland headgate diversions in Colorado returned to the stream and were available for use in Wyoming, and consented in 1939 to the reopening of the Colorado meadowland headgates.

VI.

The state of Colorado and her officials recognize that her water users under the decisions and decrees of this Court are now limited in the use of water from the Laramie River to headgate diversions of 39,750 acre feet of water per annum. The Colorado local laws apply to the distribution among her water users of the water so allocated. The state of Wyoming, under the allegations of her petition as evidenced by paragraph numbered 9 thereof, seeks to hold the state of Colorado in contempt of this Court only because of the diversion of more than 4,250 acre feet of water alleged to be awarded and set over to meadowland diversions under the decree of this Court of June 1, 1936. By such allegations Wyoming disregards the application of the local Colorado laws regulating the distribution by the state of Colorado among her water users of the equitable apportionment allocated to the state by this Court, and fails to recognize that any excess diversions over 4,250

acre feet by the meadowland appropriators were in accord with their rights under the state laws until June 18, 1939, and thereafter were made with the consent and acquiescence of the water officials of the state of Wyoming.

VII.

The state of Wyoming and her water users suffered no injury from the actions complained of in her petition. This Court has fixed Colorado's equitable apportionment of stream flow at 39,750 acre-feet of water per annum and has determined that Colorado may withhold such amount of water from Wyoming and her water users. In her petition Wyoming alleges that the Colorado transmountain appropriators exported a total of 23,517 acre feet of water from the basin. The difference between this amount and 39,750 acre feet, or 16,233 acre feet, was admittedly available to supply the Colorado meadowland appropriations, some of which are senior to all the Colorado transmountain appropriations. In her petition Wyoming further alleges that the Colorado meadowland appropriators diverted a total of 29,025 acre feet of water from the stream. Wyoming by her pleadings in this litigation and by her admissions, as heretofore alleged, has conceded that at least 75% of the meadowland headgate diversions return to the stream and are available for diversion and use in Wyoming. Thus under the allegations of Wyoming's petition and her admissions in this case, a total of 30,773 acre feet of water (23,517 plus ¼ of 29,025) was actually withheld by Colorado from Wyoming, an amount 8,977 acre feet less than this Court has determined to be Colorado's equitable apportionment of the flow of the interstate stream each year.

VIII.

During the 1939 irrigation season the administration of the flow of the Laramie River in Colorado was attended by uncertainty and confusion which arose not only from disputes between Colorado water users and from the asser-

tions by the Colorado transmountain diverters that this Court had specifically allotted to them certain amounts of water but also from the attitude of the officials of the state of Wyoming who consented to and approved of excess diversions through the meadowland headgates after such headgates were closed by the order of the Colorado State Engineer. Notwithstanding such confusion and uncertainty and over the vigorous objections of the Colorado water users the Colorado State Engineer, the responsible Colorado official, did by extraordinary efforts administer the stream flow in accordance with both the decisions and decrees of this Court and the decree of the District Court of Larimer County, Colorado, until the time when the meadowland appropriators did reopen their headgates with the consent and acquiescence of Wyoming officials. Such actions, encouraged by the officials of the state of Wyoming, resulted in such an unusual and difficult situation that the Colorado water officials were in doubt as to the correct procedure. This doubt was further increased by the attitude of the Wyoming officials at the conference of July 1, 1939, hereinbefore mentioned. At no time did the Colorado State Engineer, or anyone acting under him, authorize or acquiesce in any diversions of water from the Laramie River in violation of the decisions and decrees of this Court.

IX.

During the 1940 irrigation season and during all future irrigation seasons the Colorado water officials can and will, unless otherwise ordered by this Court, administer the flow of the Laramie River in Colorado in accordance with the Colorado laws and adjudication decrees up until the time when a total amount of 39,750 acre feet of water measured at the ditch headgates has been diverted from the stream. When such amount has been diverted in any year, the Colorado water officials can and will close the headgates diverting water from said stream and keep such headgates closed during the remainder of such irrigation season.

X.

Colorado denies each and every allegation set forth in the petition of Wyoming and not specifically admitted herein.

XI.

This is a suit between two states of the union in which principles of right and equity shall be applied, having regard to the equal level or plane on which all the states stand in point of power and right under the constitutional system of the United States of America.

XII.

In view of the premises no act of the state of Colorado or of anyone acting under the authority of the state of Colorado constitutes a violation of any decree of this Court or a contempt of this Court.

WHEREFORE, the state of Colorado prays that the rule to show cause entered herein on March 4, 1940, be discharged and that the petition of the state of Wyoming be dismissed.

RALPH L. CARR,
Governor of the State of Colorado,

CLIFFORD H. STONE,
JEAN S. BREITENSTEIN,
Special Counsel for the State of Colorado.

STATE OF COLORADO,
CITY AND COUNTY OF DENVER } ss.

RALPH L. CARR, of lawful age, being first duly sworn according to law upon oath deposes and says:

That he is the Governor of the State of Colorado and as such has caused to be prepared the foregoing Return to the Rule to Show Cause Entered by this Court on March 4, 1940, that he has read the foregoing Return and knows the contents thereof, that the facts therein set forth are true as he verily believes.

RALPH L. CARR.

Subscribed and sworn to before me this 22nd day of March, A. D. 1940.

My Commission expires July 26, 1942.

MARIAN L. POWELL,
Notary Public.

EXHIBIT "A."

EXECUTIVE ORDER.

WHEREAS, Written demand has been made by the Governor as the Chief Executive of the State of Colorado, on the Honorable Byron G. Rogers as Attorney General of the State of Colorado, to prepare a return in conformity with said written demand, on behalf of the State of Colorado by Ralph L. Carr, its Governor, in that certain case now pending in the Supreme Court of the United States of America, wherein the State of Wyoming is Complainant and the State of Colorado is Defendant, in which case the Defendant has been required to show cause why that State is not in contempt of the United States Supreme Court by reason of certain alleged violations of an order of that Court, dated June 1, 1936; and

WHEREAS, the Governor has suggested that Byron G. Rogers, as Attorney General, withdraw his appearance in said Court as the representative of the State of Colorado, in the event he is unwilling to so draft said return; and

WHEREAS, said Byron G. Rogers, as Attorney General, has not only refused to draft said answer in conformity with said request, but has refused to withdraw his appearance in said Court;

NOW, THEREFORE, I, Ralph L. Carr, as Governor and the Chief Executive of the State of Colorado, do order that the appearance of Byron G. Rogers, Attorney General, be withdrawn and recalled as the representative of the Defendant in said case and that no pleading, return, brief, or oral argument on the part of said Byron G. Rogers, either personally or as Attorney General, be held or considered as being done on behalf of the Governor of the State of Colorado, or of the State of Colorado, as Defendant; and

IT IS FURTHER ORDERED that the Honorable Clifford H. Stone, an attorney at law of the Bar of the Supreme Court of Colorado and of the Supreme Court of the United States of America, and Director and Attorney for the Colorado Water Conservation Board, be and he hereby is selected, designated and appointed as the attorney for the State of Colorado in said case, with the power and authority to select such legal assistants, counsel and advisors as he may be advised and that the appearance and presentation for filing of briefs, returns and other pleadings in the Supreme Court of the United States of America by him shall be held and be considered as being done for and on behalf of the State of Colorado in said case.

GIVEN under my hand and the Executive Seal this Twentieth day of March, A. D. 1940.

RALPH L. CARR,
Governor of the State of Colorado.

EXHIBIT "B."

STATE OF COLORADO, }
County of Larimer } ss.

IN THE DISTRICT COURT.
No. 7897.

ADELRICK BENZIGER,
Plaintiff,
vs.
THE WATER SUPPLY & STORAGE COMPANY, a corporation, THE TUNNEL WATER COMPANY, a corporation, THE DIVIDE CANAL & RESERVOIR COMPANY, a corporation, M. C. HINDERLIDER as State Engineer of the State of Colorado, and R. A. MOSIER, as Commissioner of Water District No. 48,
Defendants.

DECLARATORY JUDGMENT AND DECREE.

This cause having come on for trial to the Court on Tuesday, the 31st day of January, 1939, the plaintiff appearing in person and by his attorneys, Fancher Sarchet and J. W. Vaughn, the defendants The Water Supply & Storage Company and The Tunnel Water Company appearing by their attorneys, L. R. Temple and Albert P. Fischer, the defendant The Divide Canal & Reservoir Company appearing by Robert G. Smith, its attorney, the defendants M. C. Hinderlider as State Engineer of the State of Colorado and R. A. Mosier as Commissioner of Water District No. 48 appearing in person and by their attorneys, Byron G. Rogers, Attorney General of the State of Colorado, and Shrader P. Howell, Assistant Attorney General of the State of Colorado; and the evidence adduced by the parties hereto having been concluded on the first day of

February, 1939, and the Court having heard said evidence and having read and examined the exhibits introduced by said parties and having heard the arguments of counsel, which were concluded on the 2nd day of February, 1939, and the cause having been continued to this 21st day of February, 1939, for making and entry of decree, and the Court being now sufficiently advised in the premises, DOTH FIND:

I.

That the plaintiff and the defendant corporations are each appropriators of water for the purpose of irrigation out of the Laramie River and its tributaries, said river being an interstate stream which has its source in mountainous country in Larimer County, Colorado, and flows thence in a northerly direction into the State of Wyoming. That all of the territory drained by the said Laramie River and its tributaries in Colorado comprises Water District No. 48 of the State of Colorado, and appropriations of water for irrigation purposes from said river and its tributaries in Colorado and involved in this cause have heretofore been duly adjudicated and decreed by this Court in proceedings under the applicable statutes of the State of Colorado, for the adjudication of priorities to the use of water for irrigation, and that the plaintiff and the defendant corporations are the owners respectively of priorities under said decrees of dates and rate of flow as follows:

Plaintiff, Adelrick Benziger, owner of two ditch priorities; Martin No. 1 priority of date April 20, 1883, for 15.5 second feet; and Martin No. 2 Priority of date April 30, 1887, for 14.5 second feet, for irrigation of native hay meadowland owned by him in the Laramie River valley and adjacent to the Laramie River;

Defendant The Water Supply & Storage Company, owner of Skyline Ditch priority of date August 7, 1891, for 400 second feet, for transmountain diversion to lands outside of the Laramie River watershed;

Defendant The Divide Canal & Reservoir Company, owner of Wilson Supply Ditch, priority of date June 15, 1899, for 288 second feet, for transmountain diversion to lands outside of the Laramie River watershed; and

Defendant The Tunnel Water Company, owner of the Laramie Poudre Tunnel, priority of date August 25, 1902, for approximately 250 second feet, for transmountain diversion to lands outside the Laramie River watershed.

II.

That plaintiff's said two ditch appropriations are among and included in those "certain meadowland appropriations" referred to and involved in the original actions hereinafter mentioned brought by the State of Wyoming against the State of Colorado, in the Supreme Court of the United States. And the said defendants' said several appropriations are the same appropriations referred to and involved in said original actions, and are therein referred to as, "the Skyline ditch appropriations," "the Deadman Creek appropriations," and "the Laramie-Poudre Tunnel appropriation," respectively.

III.

That there are other appropriators of water out of said Laramie River and its tributaries in said Water District No. 48 for irrigation of native hay meadowland owned by them in the Laramie River Valley in Colorado, and adjacent to said river or its tributaries; and of said other appropriators all those hereinafter in this paragraph mentioned own appropriations having priorities decreed in said Water District No. 48 of an earlier date than the said Skyline appropriation and the said appropriations of the other defendants; and all of said meadowland appropriations are among and included in those "certain meadowland appropriations" referred to and involved in said original actions in the Supreme Court of the United States; That in the foregoing respects said meadowland appropriators are

all similarly situated to plaintiff, and plaintiff herein has brought and prosecuted this cause in his own behalf and in behalf of said other meadowland appropriators thus similarly situated. That those appropriators in whose behalf this cause is prosecuted (including plaintiff) are, and own the appropriations listed, as follows:

Name of Present Owner	Name of Ditch	Date of Appropriation	Number of Second Feet
Martin Hohnholz	Mansfield #2	6- 1-80	19.84
Clarence Oviatt	Warren	3-25-81	6.67
Emma Hohnholz	Hance	3-21-81	19.44
Clarence Oviatt	Stuck Creek	4- 1-81	16.12
G. R. Holcombe	Jim Creek	7-10-81	9
Clarence Oviatt	Bliler & Boswell (only as to that portion used in Colorado)	4- 1-82	7.04
Emma Hohnholz	Mansfield	4-20-82	11.61
R. M. Leake, Jr.	Yelton (a joint interest)	7- 1-82	30.14
Adelrick Benziger	Martin #1	4-20-83	15.5
Ralph Tatham and R. M. Leake, Jr.	La Garde	6-10-83	10.33
H. F. Piper	Ward #1	6-15-83	4.25
H. F. Piper	Ward #2	7- 1-83	9.48
R. M. Leake, Jr.	Jimmy Creek	6- 1-84	5.52
H. F. Piper	Trollope	6-15-84	6.89
Adelrick Benziger	Martin #2	4-30-87	14.50
Martin Hohnholz	Grace Creek	4- 1-88	3.07
Louis E. Sholine	Brown Ditch	5-31-90	10.
Kay H. Olson	Lamb	6- 1-90	3.88
R. M. Leake, Jr.	Jimmy Creek Ditch	5- 1-91	

IV.

That all of the irrigated lands of the said meadowland appropriators, including plaintiff, are lands in cattle ranches and are of altitude of approximately 8000 feet

above sea level, and the only crop for which they are adapted is native hay; That for the proper irrigation of said lands it is necessary to keep the same wet by continuously flooding said lands for a period of approximately sixty days during each growing season, commencing about the 25th day of May of each year; that said meadowlands are situated along and adjacent to the main Laramie River or one or more of its tributaries and slope toward said river or tributary. And as heretofore applied on and to the irrigation of said meadowlands, of the waters diverted from the flow of said river system at the headgates of the several ditches under said appropriations, approximately 90% thereof has returned to the said river through percolation and surface return flow, and only the remaining approximate 10% has been actually consumed by the meadow growth and evaporation; and all of such return flow and percolation has been available to ditches having their headgates further downstream, including all appropriators from said river in the State of Wyoming. That the total water diverted during each year under the said meadowland appropriations herein before listed (and exclusive of other meadowland appropriation not herein listed, but which are included in those "certain meadowland appropriations" mentioned in the said Supreme Court actions), at the headgates of said listed ditches has been approximately 25,600 acre feet, of which approximately 90% has returned to the stream flow for the benefit of diversions lower downstream, including the State of Wyoming. And that until the situation now confronting the water users and appropriators in said Water District No. 48 arose by reason of the limitations placed upon Colorado and her appropriators of water, under the findings, opinions, and decrees of the Supreme Court of the United States hereinafter mentioned, the natural flow of said Laramie River and its tributaries was and has been sufficient to supply all decreed priorities in said Water District No. 48.

V.

That heretofore those certain original suits involving the appropriations and use of water from said Laramie River, an interstate stream as aforesaid, were brought and prosecuted by the State of Wyoming against the State of Colorado before the Supreme Court of the United States, and the findings, opinions, and decrees of said Supreme Court are officially reported as follows, to-wit:

No. 3 original, October term, 1921, entitled The State of Wyoming v. The State of Colorado, decided June 5, 1922, officially reported in 259 U. S. at page 419 and decree reported in 259 U. S. at page 496. (Also reported in 42 S. Ct. 552 and 594; 66 L. Ed. 999.)

On October 9, 1922, a modified decree was entered in the foregoing cause which is officially reported in 260 U. S. at page 1. (Also reported in 43 S. Ct. 2; 66 L. Ed. 1026.)

No. 15 original, October Term, 1931, entitled The State of Wyoming v. The State of Colorado, decided upon motion to dismiss May 31, 1932, officially reported in 286 U. S. at page 494. (Also reported in 52 S. Ct. 621; 76 L. Ed. 1245.)

No. 10 original, which is the same cause as the foregoing No. 15 original, October Term, 1935, entitled The State of Wyoming v. The State of Colorado, officially reported in 298 U. S. at page 573. (Also reported in 56 S. Ct. 912.) (And decree therein officially reported in ..... U. S. at page ..... Exhibit "E" herein.)

VI.

That in and by said suits the Supreme Court of the United States found, determined, and decreed, as between the two States and their respective appropriators of water from the Laramie River and all its tributaries, excluding Sand Creek, that by reason of prior appropriations by Colorado appropriators, in limits as to quantity of water

and as to dates of appropriation fixed by said Court as between the two States, that there was thereby confirmed and established:

The right of the State of Colorado, or of any one recognized by her as duly entitled thereto, to divert and take within that State a total of 39,750 acre feet in each year (and no more) in virtue of appropriations prior to Wyoming appropriations and in amounts as follows:

(1) 18,000 acre feet of water per annum from the Laramie River and its tributaries in virtue of the Skyline Ditch appropriations;

(2) 4,250 acre feet of water per annum from such stream and its tributaries in virtue of certain meadowland appropriations;

(3) 2,000 acre feet from the headwaters of Deadman Creek, a tributary of the Laramie River, through the Wilson supply ditch;

(4) 15,500 acre feet of water per annum from the Laramie River and its tributaries, in virtue of the Laramie-Poudre tunnel appropriation;

and all remaining waters of said river and its tributaries was thereby confirmed and established in the State of Wyoming and her water claimants. And by further provisions in said decrees the defendant therein, the State of Colorado, was specifically enjoined from diverting or taking any waters in excess of the confirmed rights to 15,500 acre feet and 4,250 acre feet in virtue of Laramie-Poudre Tunnel appropriation and in virtue of the meadowland appropriations, respectively, there being no showing in said suits of any exigency requiring specific injunctions against the State of Colorado respecting the other recognized and accredited diversions by the other defendant corporations herein.

VII.

That from and by reason of said suits, and the said opinions, decrees, and injunctions rendered therein by the Supreme Court of the United States, uncertainties exist and controversies have arisen between the defendants and the plaintiff and the other appropriators in whose behalf this action is brought and prosecuted: The defendant corporations and the defendant water officials contending and construing said Supreme Court decisions and decrees as modifying the adjudication decrees of this Court in the State of Colorado as pertain to said Water District No. 48, and in effect nullifying said state decrees by adjudicating amounts and priority of right as between the defendant corporations and the meadowland appropriators, irrespective of the adjudications in this Court and the priorities as decreed in this Court; and the plaintiff, for himself and others similarly situated, contending and construing said Supreme Court decisions and decrees as limiting Colorado's use of said river waters in a total allocation as between the states, and contending that the meadowland appropriations should be first satisfied according to their priorities to the extent of such total allocation, whereby only the remaining water accredited to Colorado would be available to the defendant corporations under their junior appropriations. Wherefore, to remove such uncertainty and terminate such controversy, this Declaratory Judgment and Decree is proper and necessary to declare the status and rights of the parties hereto, and to direct a proper administration of the diversion of waters in Water District No. 48 for irrigation.

VIII.

That said defendant corporations assert the right to divert and take and unless enjoined and restrained will, if water is available, divert and take each year from the Laramie River and its tributaries a total of 35,500 acre feet of water; that the defendant The Water Supply &

Storage Company asserts a right to divert and take and will divert and take, unless enjoined from so doing, each year 18,000 acre feet of water; that the defendant corporation The Tunnel Water Company asserts the right to divert and take, and will divert and take, unless enjoined from so doing, each year 15,500 acre feet of water; that the defendant The Divide Canal & Reservoir Company asserts the right to divert and take, and will divert and take, unless enjoined from so doing, each year 2,000 acre feet of water; that the defendant M. C. Hinderlider, as State Engineer of the State of Colorado, proposes and asserts that he will, beginning in April of the present year, unless enjoined and restrained from so doing, administer the distribution of the water of the said Laramie River and its tributaries by permitting each defendant corporation to take each year the several amounts above stated, making said total of 35,500 acre feet, without regard to priorities as determined by Colorado decrees; and that he will distribute only the remaining 4,250 acre feet of the total accord or mass allocation to the ranchers in said Water District, measured at the headgates; that the situation thus disclosed renders the plaintiff and said other persons similarly situated insecure in their rights, will lead to a multiplicity of suits, and there is no adequate remedy at law in the premises, and this is a proper case for injunction.

The Court Doth Further Find and Declare:

IX.

That said original suits in the Supreme Court of the United States were of nature between the two states, and the decisions therein were intended to, and did, determine only the relative rights of the two states to divert and take the waters of the Laramie River and its tributaries; and the question of priority in time and right of the appropriations were therein dealt with and resolved and decreed only as between the two states; and it was not the purpose of said suits or of the opinions and decrees entered therein

to withdraw said appropriations and water claims from the operation of the local laws of Colorado, or to restrict their utilization in any way not affecting the rights of the State of Wyoming and her water claimants. That the fixing therein of the meadowland appropriations and enjoining any diversion and taking in excess thereof in virtue of such appropriations was and is, and was intended to be, only as between the two states, and not an adjudication or re-adjudication of the relative rights of the owners of the decreed appropriations in said Water District No. 48 in the State of Colorado; and that the relative rights of all of the owners of all of said decreed appropriations in the State of Colorado as to priority in time and right—and amount, so long as the aggregate of water diverted does not exceed the total of 39,750 acre feet accredited to Colorado appropriations, exclusive of diversions from Sand Creek or its tributaries—are subject to the constitution and laws of the State of Colorado and to the decrees heretofore entered in this Court in adjudication proceedings for said Water District No. 48.

X.

That the plaintiff and other meadowland appropriators and the defendant appropriators are entitled to divert and take water for irrigation from the Laramie River and its tributaries, through properly installed headgates in their respective ditches, according to their respective priorities in time and right as fixed by the adjudication decrees of this Court for Water District No. 48, until the total so diverted and taken by all such appropriators in each year shall equal in the aggregate the amount of 39,750 acre feet from the Laramie River and its tributaries, excluding Sand Creek; and the water officials have the duty so to administer said water. Provided, in addition to the division and measurement of said waters as heretofore by cubic feet of flow per second of time, the total diversion at the headgates in acre feet is to be determined and recorded to the end that the total amount allocated to Colorado may not

be exceeded. And provided further, since by the limitations now placed upon the State of Colorado no credit is given for return waters from diversions made by the meadowland appropriators in said Water District and all such return waters are lost to Colorado's allocation, the permitting of any unnecessary return to the stream of diverted and measured water shall be deemed waste and, as such, prohibited by the adjudication decrees of this Court.

It is Therefore Ordered and Decreed:

That in the administration of the distribution of water of the Laramie River and its tributaries in Water District No. 48 in the State of Colorado, the parties hereto shall proceed in accordance with the foregoing findings, declarations, and directions and in conformity with the Constitution and laws of the State of Colorado, under the decrees of this Court pertaining to said Water District No. 48 and upon the recognized practice of administration applied to all streams in Colorado, whereby each ditch be permitted to divert each day under its decree in accordance with date of priority. When 39,750 acre feet of water have been diverted by all the decrees exclusive of those from Sand Creek and its tributaries, all headgates are to be closed for the balance of the season.

It is further ordered, adjudged, and decreed that in the administration of the distribution of water under the decreed priorities of said Water District No. 48, all of said opinions and decrees of the Supreme Court of the United States shall be considered together and as a total limitation and mass allocation to Colorado of 39,750 acre feet annually from the waters of said river and its tributaries, exclusive of Sand Creek, and that the amount taken and distributed any year shall be measured and shall not exceed such total of 39,750 acre feet measured at the headgates, so long as said limitation continues to exist.

It is further ordered, adjudged, and decreed that the plaintiff appropriators and said defendant corporations

and each of them is enjoined and restrained from taking water from said river and its tributaries excepting as herein limited and directed; and that the defendant M. C. Hinderlider as State Engineer of the State of Colorado and all of his subordinate officers, including the defendant R. A. Mosier as Water Commissioner of said District No. 48, be and that each of them is hereby enjoined and restrained from administering the distribution of water in said Water District No. 48 otherwise than as herein directed and decreed.

It is further ordered, adjudged, and decreed that the defendant corporations herein pay the costs herein taxed and to be taxed.

Done in open court this 21st day of February, 1939, as of date February 2, 1939.

By the Court:

CLAUDE C. COFFIN, Judge.

EXHIBIT "C."

STATE OF COLORADO, }
COUNTY OF LARIMER } ss.

R. M. LEAKE, JR., of Larimer County, Colorado, Post Office Address, Jelm, Wyoming, being first duly sworn deposes and says:

That he is now and at all of the times hereinafter mentioned was the owner of a cattle ranch located on the Laramie River in said County and State; that he resides upon said ranch and operates the same; that certain decreed priorities of water from the said Laramie River are appurtenant to said ranch and continuously for a period of many years last past have been used to irrigate the hay meadows of said ranch; that he is the secretary of an organization known as the Upper Big Laramie River Water Users Association; that said association was formed

for the mutual benefit and protection of the owners of all lands in Larimer County, Colorado, irrigated from the waters of the Laramie River and its tributaries under and in virtue of certain Colorado decreed priorities of water, and that the members of said association are all owners of land in said County and State irrigated from the waters of said river and its tributaries.

Affiant refers to the decree of the Supreme Court of the United States No. 10 original, October Term, 1935, of date June 1, 1936, in re: The State of Wyoming, complainant vs. The State of Colorado, in equity. The ranches located in the valley of the said Laramie River in Colorado are the only lands in Colorado irrigated directly from said River and its tributaries; that practically all of the meadowlands of said valley are irrigated under decreed priorities of early date, beginning with June 1, 1880; and ending with May 1, 1891, and that prior to the beginning of the irrigation season of the year 1937, no adequate measuring devices were ever used to determine the amount of water taken from said river and its tributaries for the irrigation of said meadows. That after June 1, 1936, by common consent of the states of Wyoming and Colorado said ranches were irrigated without any measurement of the water until the beginning of the irrigation season of the year 1937, at which time the two states selected seven representative ditches in which measuring devices were installed for the purpose of determining the amount of water required to irrigate said meadowlands; and that in the year 1939 under the supervision of the two states measuring devices were installed in all of the ditches used for the irrigation of said meadowlands. In the years 1938 and 1939 water was applied to the meadows strictly in accordance with the Colorado decreed priorities appurtenant to said meadows and in the same manner it had been applied for a period of more than fifty years, and the measurements made in the two states in the seven test ditches in the year 1938 and the measurements made in the year 1939 disclose the fact

that the water so used upon said meadowlands during the irrigation season aggregated more than 40,000 acre feet. After June 1, 1936, by new experiments, new devices, more critical observation, and more accurate calculation, it was determined to a practical certainty that fully 90% of the water so applied to said meadows flows directly back into the river.

That on February 2, 1939, in the District Court of Larimer County, Colorado, in a suit in which Adelrick Benziger, representing himself and all others similarly situated, was plaintiff, and the Water Supply and Storage Company and other transmountain diversion ditch companies were defendants, it was ordered, adjudged, and decreed by the Court, among other things, "when 39,750 acre feet of water have been diverted by all the decrees * * * all headgates are to be closed for the balance of the season." The decrees referred to applied to all of the ditches, transmountain diversion as well as meadowland, taking water from the Laramie River and its tributaries. During the entire irrigation season of the year 1939, Mr. Ben Le Vasseur, Deputy State Engineer of the State of Wyoming, was on the Laramie River in Larimer County, Colorado, in charge of the affairs of the State of Wyoming in connection with the distribution of the said waters between the two states.

On May 22, 1939, affiant as secretary of said Water Users Association wrote the following letter to Mr. Le Vasseur:

Mr. Ben Le Vasseur:
Special Hydrographer for the State of Wyoming
Glendevy, Colorado

Dear Mr. Le Vasseur:

As secretary of the Upper Big Laramie River Water Users Association, I wish to ask you whether or not the State of Wyoming is going to request the ranchers in the valley to quit running their water under their Colorado

decreed appropriations at the time the 39,750 acre feet alloted to Colorado shall have been used. Under the declaratory judgment and decree of the District Court of Larimer County, Colorado, as of date February 2, 1939, in which Adelrick Benziger is plaintiff and the Water Supply and Storage Company, Divide Canal and Reservoir Company, Tunnel Water Company, M. C. Hinderlider as State Engineer of the State of Colorado, and R. A. Mosier as Water Commissioner of Water District No. 48, are defendants, among other things it was ordered: "That said decrees of the Supreme Court of the United States shall be considered together and as a total limitation and mass allocation to Colorado of 39,750 acre feet annually from the waters of said river and its tributaries, and that the amount taken and distributed (by Colorado) any year shall be measured and shall not exceed such total of 39,750 acre feet measured at the headgates, so long as said limitation continues to exist." As we all know, the 39,750 acre feet will soon be gone.

The members of the association which I represent all own ranches in the Laramie River Valley in Larimer County, Colorado, and decreed appropriations for the irrigation of the meadows located on said ranches and of course, will not raise hay crops unless the State of Wyoming is kind enough to permit them to continue to use their appropriations as they have done in past years. Of course, you and all of the other Wyoming officials know that the valley is narrow; that the consumptive use of the water is small; and that approximately 90% of the water used in irrigating the meadows finds its way back into the Laramie River within a short time and is thereafter available to the Wyoming water users. We realize that failure on the part of Wyoming to demand that we close our headgates or any other consent by Wyoming whether explicit or tacit to the effect that we may continue to use the water, is a mere license on the part of Wyoming for us to use her water, and that the same could be revoked at any time.

However, we feel certain in this position: That after the 39,750 acre feet has been used and all headgates are closed under the decree of the District Court of Larimer County, that the Colorado water officials will have nothing further to say concerning the use of the water which under the United States Supreme Court decrees belongs to the State of Wyoming, and that if we can have some word from the State Engineer of Wyoming through you or otherwise to the effect that no demand will be made by Wyoming for us to close our headgates, that we are then at liberty to continue to run water on our meadows through our ditches.

If you will get some word to us within the next week or ten days, you may be assured every member of our association will greatly appreciate the favor.

May 22, 1939
Very truly yours,
R. M. Leake, Jr., Sec.

Thereafter and on to-wit, the 6th day of June, 1939, affiant received a reply to said letter from Mr. Le Vasseur as follows, towit:

Jelm, Wyoming
June 5, 1939

Mr. R. M. Leake, Jr.
Sec. Upper Big Laramie River Water User's Asso.
Jelm, Wyoming

Dear Mr. Leake:

Upon receipt of your letter of May 22, 1939, I wrote to the Wyoming State Engineer, Mr. L. C. Bishop, and told him of your question concerning whether or not Wyoming would demand a regulation of the Upper Laramie ditches belonging to the valley ranchers after the 39,750 acre-feet allowed Colorado by the Court decree has been used.

At this time, my orders are not to demand such a regulation, and it doesn't seem probable that Wyoming will

demand a regulation of rights on the Laramie River where it will receive the benefit of the return flow.

Very truly yours,

Ben Le Vasseur,
Special Hydrographer.

BL:ml

Thereafter and on June 10, 1939, said Upper Big Laramie River Water Users Association held a meeting at which a motion was made and unanimously carried; that accurate minutes were kept of the proceedings of said meeting, and the following is an exact copy of said minutes:

"That at the meeting of the Upper Big Laramie River Water Users' Association, all but two members present. That the attorney of the Association is present. That the meeting is called for the purpose of discussion of the decree of the District Court of Larimer County of date Feb. 2, 1939. That an open, full, and complete discussion was engaged in by all the members present and their attorney. At the conclusion of the discussion it was moved and seconded and unanimously carried that when the 39,750 acre feet alloted to Colorado shall have been used and the ranchers are so notified by the water officials of Colorado, and further notified to close their headgates, that said headgates shall forthwith be closed.

"It was further moved, seconded and unanimously carried that in view of the fact that the decree of the District Court of Larimer County provides that only 39,750 acre feet of water shall be used by Colorado, 'so long as said limitation continues to exist'; and in view of the further fact that the State of Colorado will have no further jurisdiction over the waters of the Laramie River and its tributaries after the 39,750 acre feet has been used and said headgates have been closed, and in view of the further fact that our association is in receipt of a letter from a water official of the State of Wyoming to the effect that Wyoming

will not demand that the ranchers of the Laramie River valley be required to keep headgates closed, our said association now moves that after said headgates have been closed under the direction of the Colorado water officials, that they again will be opened and kept opened and the water used until we are notified by the State of Wyoming to close them. And our association further unanimously resolves that the interpretation of said decree of February 2, 1939, permits such action."

R. M. Leake, Jr., Sec.

That the said Ben Le Vasseur was present at said meeting of June 10, 1939, approved of said action, and was the only Wyoming official in charge of the affairs and the business of Wyoming in Colorado in connection with the distribution of said water during the irrigation season of 1939. Thereafter the Attorney General of the State of Wyoming was informed by word of mouth and also by letter of the said proceedings of said association.

Affiant further says that when the Laramie River ranchers were requested by the officials of the State of Wyoming to close their headgates each and every meadowland headgate was immediately closed and has never since been opened. Affiant further says that no request was ever made by any citizen of the State of Wyoming or any person for and on behalf of the State of Wyoming to close said headgates excepting by the State Engineer of Wyoming, and that as heretofore affirmed said request was immediately complied with.

The affirmations hereof concerning the correspondence with Wyoming officials, the minutes of said association and the things occurring at the said meeting of said association are with affiant's own personal knowledge. The remaining affirmations hereof are matters of common knowledge.

R. M. Leake, Jr.

Subscribed and sworn to before me this 15th day of March, 1940.

My Commission Expires Sept. 15, 1940.

FRANK W. MOORE,
Notary Public.

(The original of this affidavit has been filed with the Clerk of this Court.)

EXHIBIT "D."

AFFIDAVIT OF RALPH L. CARR.

STATE OF COLORADO, }
CITY AND COUNTY OF DENVER } ss.

RALPH L. CARR, of lawful age, being first duly sworn upon his oath deposes and says:

That he is now and for more than fourteen months last past has been the duly elected, qualified and acting Governor of the State of Colorado; that on, to-wit, Saturday, the first day of July, A. D. 1939, a group of men came to his office in the State Capitol Building in the City and County of Denver, State of Colorado, to discuss certain questions regarding the administration of the flow of the Laramie river in the State of Colorado, in so far as said administration came within the terms of certain decrees of the Supreme Court of the United States and of the District Courts of Colorado; that among the persons who came to his office were the Honorable Ewing T. Kerr, Attorney General of Wyoming; Mr. L. C. Bishop, State Engineer of Wyoming; Honorable M. C. Hinderlider, State Engineer of Colorado; Honorable Byron G. Rogers, Attorney General of Colorado; Lawrence Temple and Fancher Sarchet, both of Fort Collins, Colorado, and the Honorable Robert Smith of Greeley, Colorado, all of said three last named persons being attorneys for parties interested

in water appropriations in Colorado; as well as other persons who are not now recalled by your affiant.

During the conference in the office of affiant questions arose as to the amount of water diverted or which might be diverted out of certain ditches known as the transmountain diversion ditches and certain other ditches called the meadowland ditches, and that in response to questions asked by your affiant and also by State Engineer Hinderlider of the State of Colorado, Attorney General Kerr and State Engineer Bishop of Wyoming both stated expressly in the presence of affiant and the other persons that, although vastly more than four thousand two hundred fifty acre feet of water had already been diverted through such structures from the river, they had no objection to continued diversions being made through the meadowlands ditches for the reason that a great portion of all of the water so diverted returned to the Laramie river to be used downstream by water appropriators within the State of Wyoming; that said State Engineer Bishop of Wyoming then stated that in his opinion at least seventy-five to eighty-five per cent. of all diversions into said meadowlands ditches in Colorado returned to the Laramie river and became available for use by Wyoming and her appropriators; that the only objections presented by either of said officials to diversions in Colorado related to the transmountain ditches aforesaid.

Further affiant saith not.

RALPH L. CARR.

Subscribed and sworn to before me this 21st day of March, A. D. 1940.

My Commission expires July 26, 1942.

MARIAN L. POWELL,
Notary Public.

The original of this affidavit has been filed with the Clerk of the Supreme Court of the United States.

EXHIBIT "E."

AFFIDAVIT OF M. C. HINDERLIDER.

STATE OF COLORADO,
CITY AND COUNTY OF DENVER } ss.

M. C. HINDERLIDER, of lawful age, being first duly sworn upon his oath deposes and says that he is now and for many years last past has been the duly appointed, qualified and acting State Engineer of the State of Colorado; that on to-wit Saturday, July 1, A. D. 1939, this affiant attended a protracted conference respecting the administration of the waters of the Laramie River within the purview of the decree of the Supreme Court of the United States and the decree of the District Court of Colorado respecting said waters; that among others there were present at said conference Honorable Ewing T. Kerr, Attorney General of Wyoming, and Mr. L. C. Bishop, State Engineer of Wyoming, Governor Carr of Colorado, Attorney General Rogers of Colorado, and Attorneys Temple, Smith, Sarchet, and others, representing certain of the water users involved. That the only protest made by Wyoming officials on said occasion, was respecting the so-called Trans-Mountain Diversions, notwithstanding the fact that at said time said Trans-Mountain Diversions had not nearly equaled the allotments indicated by the decree of the Supreme Court of the United States; that both Messrs. Kerr and Bishop, representing Wyoming, expressly stated, not only to this affiant but to the conference generally, that they had no objection so ever to continued diversions as respects the Meadowland appropriations—those involved in the decree of June 1, A. D. 1936 in the Supreme Court of the United States; that at the time of said conference vastly more than 4250 acre feet had been diverted by said Meadowland appropriators, or approximately 20,000 acre feet, but notwithstanding which it was repeatedly stated by both Messrs. Kerr and Bishop that

further diversions by said Meadowland appropriators were not and would not be objected to; that State Engineer Bishop of the State of Wyoming stated that in his opinion at least 75% of said Meadowland diversions were returned to the Laramie River and hence became subject to Wyoming's use. That as hereinbefore stated the only objections voiced by either Attorney General Kerr or State Engineer Bishop of Wyoming related to the Trans-Mountain Diversions. Further affiant sayeth not.

M. C. HINDERLIDER.

Subscribed and sworn to before me this 18th day of March, A. D. 1940.

My commission expires July 6, 1942.

ANN G. LANDY,
Notary Public.

The original of this affidavit has been filed with the Clerk of the Supreme Court of the United States.

EXHIBIT "F."

AFFIDAVIT OF C. C. HEZMALHALCH.

STATE OF COLORADO, }
CITY AND COUNTY OF DENVER } ss.

C. C. HEZMALHALCH, being first duly sworn upon his oath, deposes and says, that he is now and ever since the year 1924 has been the duly appointed, qualified and acting Deputy State Engineer of the State of Colorado.

That in the spring of the year 1937, and prior to the opening of the irrigation season, the State of Colorado, under the direction of the State Engineer's office, and pursuant to an agreement with the water officials of the State of Wyoming, installed on seven representative ditches in the Laramie River Basin in Colorado, Parshall

Measuring Flumes for the purpose of determining the average diversion of water for the irrigation of hay meadows in the State of Colorado, from the Laramie River; and that said flumes were operated during the entire irrigation season of 1937 with automatic recording gages. That the information obtained from such records in the year 1937 was made available to the water officials of the State of Wyoming.

That in the spring of 1939, and prior to the diversion of any water from the Laramie River and its tributaries in the State of Colorado, the State Engineer of the State of Colorado caused to be installed suitable measuring devices on all of the ditches diverting water from the Laramie River and its tributaries in the State of Colorado. Further, that the State Engineer caused to be employed four Special Deputy State Engineers in addition to the duly qualified and acting Water Commissioner of Water District No. 48, comprising the Laramie River drainage in the State of Colorado, for the purpose of determining the amount of water diverted from the Laramie River and its tributaries in the State of Colorado.

That during the irrigation season of the year 1939 one Ben LeVasseur, a Deputy State Engineer of the State of Wyoming, was engaged on the Laramie River and its tributaries in the State of Colorado in making observations of the operation of the said measuring devices for the State of Wyoming.

That since the year 1922 there has been installed, and in operation an automatic recording device on the Laramie-Poudre Tunnel, and since the year 1923 on the Skyline Canal, and since the year 1935 on the Wilson Supply System, all of which divert water from the Laramie River basin into the Cache la Poudre River drainage basin in Colorado; and that ever since the installation of such devices the records therefrom have been preserved in the office of the State Engineer of Colorado, and at all times

have been made available to the Water Officials of the State of Wyoming.

That during the year 1939 the State Engineer's office administered the diversions of water from the Laramie River in Colorado in accordance with the decrees of the District Court of said State, and operated the said measuring flumes and automatic recording devices during said season with the intention and purpose of closing all headgate diversions when the total allocation made by the Supreme Court of the United States, in the amount of 39,750 acre feet, had been diverted. That affiant received frequent reports from the Water Commissioner, and Special Deputies engaged in the work on the Laramie River in Colorado as to the total amount of water diverted in the State of Colorado, so as to determine when the total amount of 39,750 acre feet had been diverted. That on the 16th day of June, 1939, affiant determined and found that within two or three days the total amount of 39,750 acre feet of water allocated to the State of Colorado would be diverted and thereupon went to the Laramie River Basin, and on the 18th of June, 1939, determined that the 39,750 acre feet had been diverted and proceeded to close all diversions from the Laramie River and its tributaries in Colorado; and each headgate through which water was diverted from the Laramie River, or its tributaries, was closed by a representative of the State Engineer's office, and there was posted thereto the following notice:

"Notice.

"..... Ditch

"This headgate has been closed by me this..... day of.....A. D. 19....., in accordance with provisions of a decree of the U. S. Supreme Court in Wyo. v. Colo.; and in accordance with decree of the District Court of Colorado, Larimer Co., Cause No. 7897 entered on the 2nd day of February, A. D. 1939.

"Further diversions by this ditch during the current year are enjoined by Court decree.

(Signed) R. A. Mosier,
Water Commissioner,
District No. 48."

That thereafter affiant was informed that the headgates in Colorado diverting water from the Laramie River were reopened and again on the 12th of July, A. D. 1939, he went to the Laramie River, and with the assistance of the Water Commissioner of said District No. 48, again closed all of the headgates in Colorado through which water was diverted from said River.

C. C. HEZMALHALCH.

Subscribed and sworn to before me this 21st day of March, A. D. 1940.

ANN G. LANDY,
Notary Public.

(Notarial Seal)

ANN G. LANDY,
Notary Public.

My commission expires July 6, 1942.

The original of this affidavit has been filed with the Clerk of the Supreme Court of the United States.